IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2559 OF 2006

O.P.Shivcharan .. Petitioner
Versus
The Union of India & Ors. .. Respondents

Mr.V.D.Surve for petitioner
Ms.S.V.Bharucha with Rutuja Ambekar for respondent Nos. 1 to 3

CORAM : S.C.DHARMADHIKARI, J
DATE : 23rd February 2007.

P.C.

. Heard learned Advocates for parties.

2. This petition is directed against an order passed by the Learned Principal Judge, City Civil Court, Mumbai dated 3rd March 2006 in Misc.Appeal St.No.91 of 2005. By this order, learned Principal Judge dismissed the appeal of petitioner and upheld the order passed by the

Estate Officer appointed under section 3 of Public Premises (Eviction of unauthorised Occupants) Act, (for short) PPE Act.

3. Petitioner, original appellant in the appeal, impugned the order passed by the Estate Officer directing that the petitioner be evicted from the premises which are public premises as he is in unauthorised occupation thereof.

4. Petitioner was working as Electrician in Naval Dockyard Mumbai. By virtue of his employment he was allotted Quarter No.33/1219 situate at Antop Hill. The petitioner appellant was served with a notice on 8th April 2003 by which it was brought to his notice that he has sub-let the said quarter to some unauthorised persons in contravention of the allotment rules and, therefore, why action should not be taken against him, as stipulated in the notice.

5. It is not in dispute that this is a notice calling upon the petitioner to show cause why the allotment should not be cancelled. The petitioner appellant replied to this notice but the authorities having not been satisfied with his explanation, passed an order dated 27th August 2003 cancelling the allotment. In terms of the order and the rules, petitioner was permitted to make a representation to higher authority. The representation was accordingly made through a proper channel but the same was turned down and in such circumstances on 4th September 2003 a notice was issued under section 4(2)(B)(ii) of the PPE Act.

6. Petitioner replied to the show cause notice and denied that the premises have been sub-let by him allegedly. He insisted that he has been residing therein right from the date of its allotment and he is class IV employee. He has never moved out of the same. He relied upon

some documents, including identity card, railway pass etc. in support of his plea that premises have not been sub-let by him as alleged in the show cause notice.

7. The Estate Officer also took on record an application by the petitioner requesting that he be allowed to cross examine certain witnesses.

8. The Estate Officer after concluding the hearing delivered his order on 25th May 2004 and held that the petitioner is in unauthorised occupation of the public premises and that he should be evicted from the same. Reasons that are assigned by him would show that the premises have been sub-let to unauthorised persons.

9. Aggrieved by this order of the Estate Officer, petitioner preferred the above misc.appeal.

10. Learned Presiding Officer has rejected both submissions of the learned Advocate for the petitioner viz., that the authorities are estopped from issuing a show cause notice under the PPE Act, once they have decided to drop the action of cancelling the allotment made in favour of the petitioner. Further, the argument that the petitioner has not sub-let the premises has also been rejected.

11. Learned Advocate appearing for the petitioner has reiterated the aforesaid submissions before me and contended that there is no sub-letting on the part of the petitioner.

12. Learned Principal Judge has in para 17 of the impugned order specifically referred to the surprise inspection/check of the subject public premises which demonstrates that one Ms.Shama Begam and others were found in occupation of the premises. Neither the petitioner nor any of his

family members were found or any personal belongings were in the premises. The learned Principal Judge has referred to the inspection carried out in February 2003 and also the explanation of the petitioner that he had gone to his native place in December 2002. In my view, in writ jurisdiction, it is not permissible for me to take a different view of the materials produced on record. Once, the Estate Officer and the Principal Judge concurred and hold that the premises have indeed been sub-let and the petitioner and his family members are not in physical possession thereof, then, the action of the authorities in evicting petitioner from subject premises cannot be faulted. Thus, the satisfaction of the Estate Officer on both grounds viz., that the petitioner has inducted third party and that he needs to be evicted from the same being based upon materials produced, including inspection report have rightly been upheld by the Principal Judge. There is no merit

in this petition and the same is summarily dismissed.

(S.C.Dharmadhikari, J)